IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.529 OF 2005

Mr.Jethalal Ratan Patel — Appellant

Vs.

The Municipal Corporation of
Gr.Mumbai — Respondent

Mr.Vinay Hegde for appellant.
Ms.Geeta Joglekar for respondent.

CORAM: B.H.MARLAPALLE,J.
June 28, 2005.

ORAL ORDER:

1. Heard the learned counsel for the appellant and the learned counsel for the respondent - Corporation. Being aggrieved b y the order passed by the City Civil Court at Mumbai rejecting Notice of Motion No.2888 of 2004 this appeal has been filed by the appellant-plaintiff. The respondent - Corporation issued notice under section 314 of the Mumbai Municipal Corporation Act on 19-7-2004 informing the plaintiff that the premises admeasuring 12 x 18 ft. with Census No.KWX-82-1/2, Opposite Laxmi Industrial Estate, New Link Road, Behram Baug, Jogeshwari (West) was an unauthorised structure and it was located on the set back land required by the Corporation for widening of the road. Seven days

period was given for the plaintiff to take steps to remove the structure located on the set back land bearing CTS No.650/2 village Oshiwara admeasuring 6702.04 sq.mts. This land was handed over to the Corporation by M/s.Oshiwara Development Corporation on 25-7-2003 for widening of the road.

2. The plaintiff did not submit a reply to the said notice and instead challenged it in L.C. Suit No.3446 of 2004. Ad-interim stay was granted from time to time and finally the notice of motion came to be dismissed by the impugned order. The learned counsel for the appellant by relying on the decision of this court in the case of J.R.Patil vs. the Municipal Corporation of Gr.Mumbai (A.O. No.681 of 2001) and other connected appeals, submitted that the respondent - Corporation was required to issue a show cause notice so as to provide an opportunity of hearing and the final action of demolition could be undertaken only after the plaintiff was heard. Instead by the impugned notice the Corporation straightway communicated its intentions to demolish the suit structure and thus acted contrary to the law laid down by this Court.

3. It is obvious that the plaintiff had approached this court in the first round and this appeal is in the second round. The respondent - Corporation in its written statement before the Court below stated that the plot was handed over to it on 25-7-2003 and immediately thereafter it was cleared of all structures standing on it. However, subsequently the suit structure was put up and it was claimed that it was standing for more than ten years. In support of his case the plaintiff had submitted two documents before the trial Court and both of them have been found to be unreliable. The shops and establishments certificate in the name of Siddhivinayak Stationery and Xerox Centre did not pertain to the suit structure as noted by the trial Court. Though the reasoning set out by the trial Court does not call for any interference, the written statement filed by the corporation is indicative that by following the law laid down by this court in the cases quoted hereinabove, they propose to hear the plaintiff pursuant to the notice issued under section 314 of the MMC Act and then proceed to demolish the suit structure. It is further submitted that the plaintiff did not utilise this opportunity and straightway rushed to the court and obtained

ad-interim injunctions. The learned counsel for the Municipal Corporation has placed on record some photographs in support of the plea that the plot has been cleared and no structure is standing on the said plot except the suit structure and that too because of the ad-interim orders passed by the Court from time to time. The road widening work is held up and even before the trial Court the plaintiff could not make out a prima facie case to continue with the ad-interim orders.

4. In keeping with the principles laid down by this court in the cases cited above it is necessary that the plaintiff is heard by the Municipal Corporation and the learned counsel for the plaintiff states that the plaintiff would appear before the designated officer i.e the Asst. Commissioner, K-West Ward within one week and submit a detailed reply to the notice dated 19-7-2004 and also submit the documents, if any, other than those submitted before the trial Court, in support of his case that the proposed action under Section 314 is unwarranted. It is, therefore, directed that the plaintiff will approach the Asst. Commissioner, K - West Ward within one week from today and the said officer shall

hear the plaintiff and pass appropriate order within one week thereafter. The final order to be communicated to the plaintiff by 8th July 2005 and the ad-interim order granted in this appeal shall be operative till 8th July 2005. The appeal is disposed off accordingly.

(B.H.MARLAPALLE,J.)